Supreme Court, U. S.
FILED
APR 2 1975
MICHAEL

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

No. 74-1243

ALVIN A. BECKWITH, JR.,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

JOHN G. GILL, JR.
22 West Jefferson Street
Rockville, Maryland 20850
Attorney for Petitioner.

April 2, 1975

Washington, D.C. • THIEL PRESS • (202) 638-4521

TABLE OF CONTENTS

Page

OPINIONS BELOW 1
JURISDICTION 2
QUESTION PRESENTED 2
CONSTITUTIONAL PROVISIONS INVOLVED 2
STATEMENT 3
ARGUMENT
I. At the Time of the Interview, Petitioner Was a Virtual or Putative Defendant 6
II. Conflict in the Circuits 8
III. Importance of This Case 10
CONCLUSION 11

TABLE OF CITATIONS

Cases:

Green v. United States, 411 F.2d 588 (10th Cir.) 8
Miranda v. Arizona, 384 U.S. 436 . . . . . *passim*
Orozco v. Texas, 394 U.S. 324 6
Pettyjohn v. United States, 136 U.S. App. D.C. 69, 419 F.2d 651, 652 8
United States v. Dickerson, 413 F.2d 1111 (7th Cir.) 9
United States v. Fox, 403 F.2d 97 (2nd Cir.) 7
United States v. Mandujano, 496 F.2d 1050 (5th Cir.) 7
United States v. Miller, 261 F. Supp. 442 (D. Del.) 8
United States v. Mullings, 364 F.2d 173, (2nd Cir.) 7
United States v. Robinson, 142 U.S. App. D.C. 43, 439 F.2d 553 7

Cases, continued: Page

United States v. Turzyanski, 268 F. Supp. 847 (N.D. Ill.) 9

United States v. Wong, 74-1636 (9th Cir., Sep. 23, 1974) 7

Constitutional Provisions:

Constitution of the United States
Amendment V 2
Amendment VI 2

Miscellaneous:

28 United States Code §1254(1) 2

U.S. Tax Cases, CCH 67-2, p. 84, 574 ¶9489 7

TABLE OF CONTENTS OF APPENDIX

APPENDIX A

Opinion of the United States Court of Appeals for the District of Columbia Circuit 1a

APPENDIX B

Oral Opinion of the District Court 1b

Press Release 3b

Rights Read to Petitioner 4b

Miranda Warning Approved by District of Columbia Circuit 4b

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

No.

ALVIN A. BECKWITH, JR.,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

OPINIONS BELOW

The opinion of the Court of Appeals (App. 1a) is not yet reported. The District Court wrote no opinion but gave an oral ruling which is reproduced herewith (App. 1b).

JURISDICTION

The opinion of the Court of Appeals was filed on January 22, 1975. Petitioner filed a timely petition for re-hearing and suggestion for re-hearing *en banc*, which was denied by order of the Court of Appeals filed March 3, 1975. This petition is being filed within thirty days of that order. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the Fifth and the Sixth Amendments to the Constitution of the United States entitled petitioner to complete *Miranda* warnings by Special Agents of the Intelligence Division of the Internal Revenue Service during the "critical" August 2, 1972, interview, which interview took place during the accusatory stage of a solely criminal tax investigation at a time when appellant was a "target defendant" and the subject of "legal harassment" by the Government which believed petitioner to be an illegal narcotics trafficker but had absolutely no proof of such criminal activity?

CONSTITUTIONAL PROVISION INVOLVED

Constitution of the United States of America,

Amendment V:

> No person shall be * * * compelled in any criminal case to be a witness against himself, nor to be deprived of life, liberty, or property, without due process of law; * * *

Amendment VI:

> In all criminal prosecutions, the accused shall * * * have the assistance of counsel for his defense.

STATEMENT

Petitioner was charged with two (2) counts of attempting to Evade and Defeat Federal Income Taxes in violation of 26 U.S.C. §7201 by indictment filed June 6, 1973, in the District Court for the District of Columbia. On October 4, 1973, the Honorable Aubrey Robinson heard and denied petitioner's Motion to Suppress Statements and Evidence. Thereafter on March 21, 1974, petitioner waived his right to jury trial and was found guilty on a stipulated record as to Count 2 of the indictment. On May 2, 1974, petitioner was given a maximum sentence of five (5) years imprisonment plus a $10,000 fine plus court costs. Count 1, which had been severed on the date of trial was then dismissed. Upon his appeal to the District of Columbia Circuit, his conviction was affirmed and his petition for rehearing and suggestion for re-hearing *en banc* to that Court were denied.

The theory of prosecution upon which petitioner stands convicted was the "net worth" method of proving a criminal understatement on his 1971 Federal Tax Return. Prior to trial, petitioner, his trial counsel, and the Government entered into a detailed stipulation covering some 60 items and nine pages of exhibits (R. 13). This stipulation saved the prosecution from calling over 100 witnesses.

Crucial to the prosecution's case was stipulation number 2 which covered some 10 different statements made by petitioner during his initial interrogation by two Special Agents of the Intelligence Division of the Internal Revenue Service on August 2, 1972. These statements of defendant covered his sources of income prior to 1972, his cash on hand each year from 1965 through 1971 and certain other important facts concerning the preparation of the computations on his 1971 Federal Income

Tax Returns. There is substantial agreement between the parties that, without the starting point provided by Stipulation No. 2, the prosecution would not have had a provable case against petitioner.

It was from the starting point provided by petitioner's August 2, 1972 statements that a taxable income of $24,638.02 was computed for petitioner in 1971. This in turn showed a criminal understatement of $13,815.24 and an income tax deficiency of $5,895.54 (Stipulation No. 24, R. 13, pp. 6-7). Petitioner presented no factual defense to the stipulated record (Stipulation No. 26) and was thus found guilty.

Prior to trial, petitioner moved to suppress all statements he made to Special Agents of the Internal Revenue Service on August 2, 1972. At the hearing the Court noted (Tr. 10-11), and the Government conceded (Tr. 23), that the involved Special Internal Revenue Agents "were focusing on this defendant" from the outset and that the IRS never had any civil intention with respect to petitioner. Further, it was clear, and the judge took into account, that petitioner had been labeled as a target by the Justice Department and the criminal investigation conducted thereafter was directed only at returning an indictment against him. (See Press Release App. 3b) [1]

Evidence at this hearing showed that petitioner was a 44-year old, black, ninth-grade dropout who never had any contact with the preparation of tax returns. Although he had had an accountant file returns for him in the past, he had never prepared nor filed a tax return in his entire life and, although he had been once previously arrested in 1963, he had never theretofore been

[1] This Press Release was considered by the trial judge (Tr. 121) and appeared in the record below at R. 7, p. 14, Exhibit A.

advised of his constitutional rights to counsel and against self-incrimination. (Tr. 86-88).

The two Special Agents who conducted the August 2, 1972 interview testified that they were members of the Intelligence Division and their function was exclusively concerned with criminal violations of the Revenue laws. On said date they made their initial unannounced appearance at petitioner's home at 8:00 A.M. After petitioner finished dressing, they read to him from a form card printed by the Internal Revenue Service (Tr. 30-31) (R. 7, p. 15) (App. 4b). As is apparent, the Agents' warning to Petitioner gave some advice as to his constitutional right to silence and counsel, but fell far short of the minimum rights required by this Court in *Miranda v. Arizona*, 384 U.S. 436. Petitioner was not told "he had a right to remain silent or not to answer any questions." Nothing was said to petitioner "about net worth or about proving understatement of income or cash expenditure theories or anything like that" (Tr. 34-35). Indeed, after questioning petitioner for from fifteen to thirty minutes, Special Agent Peterson felt it necessary to determine if petitioner was able to read. Thereafter, the questioning continued until about 11:00 A.M. without a break. (Tr. 38-41.) At that time the Special Agents requested that petitioner produce corporate books and records from the store where he was employed. Without seeking the advice of counsel, petitioner took the Special Agents directly to his place of business and turned over the requested records. (Tr. 48.)

Thereafter, in June of 1973, petitioner was indicted via original action of the Grand Jury and these Special Revenue Agents, accompanied by two agents from the Bureau of Narcotics and Dangerous Drugs, effected petitioner's arrest at his place of business. Petitioner has

never been arrested for, nor charged with, the violation of any narcotic law.

Thereafter, the trial judge denied defendant's motion to suppress these statements and everything that flowed from them. In entering into Stipulation No. 2, which was based on the August 2, 1972 interview and which formed the entire basis for the net worth theory of prosecution of the Government, it was clear that petitioner did not waive his challenge to the legality of the interview and the admissibility of said statements at trial.

ARGUMENT

I.

AT THE TIME OF THE INTERVIEW, PETITIONER WAS A VIRTUAL OR PUTATIVE DEFENDANT.

It is clear that the minimum requirements of *Miranda v. Arizona*, 384 U.S. 436, apply to tax investigations. *Mathis v. United States*, 391 U.S. 1. It is also clear that the mere fact that the interview took place in petitioner's home does not relieve the Government from the minimum requirements of *Miranda*. *Orozco v. Texas*, 394 U.S. 324. While the Court of Appeals below rejected petitioner's *Miranda* arguments on the ground that he was not in custody, petitioner respectfully submits that such a wooden holding is inconsistent with this Court's intendment of when *Miranda* requirements apply and further that it ignores the record's showing that, at the time of the interview, petitioner was a virtual or putative defendant, a target for the application of the criminal tax laws by Special Agents of the Intelligence Division who were set upon convicting petitioner, not for suspected tax violations, but for alleged, but unprovable narcotics violations. This Court explained what it meant by "custodial circumstances" in *Miranda* when in Foot-

note 4, it described them as an "investigation which had focused on an accused." (384 U.S. 436, 444.) This case is quite close to the fact situation in *United States v. Mandujano*, 496 F.2d 1050 (5th Cir.) which holds that full *Miranda* warnings must be accorded a person who, at the time he testifies before the Grand Jury, is a "putative or virtual defendant." See also *United States v. Wong*, 74-1636 (9th Cir., Sept. 23, 1974). Heretofore, courts have not exclusively looked to prison walls, handcuffs, or back room police station physical restraint as the touchstone of *Miranda*. They have also taken note of the focus of the investigation upon the accused and the "target" of the Government investigators. *Orozco v. Texas, supra*. *United States v. Robinson*, 142 U.S. App. D.C. 43, 439 F.2d 553.

Here petitioner was given only a semblance of the advice of rights to which *Miranda* has entitled him.[2] Petitioner was not told of his absolute right to remain silent nor to refuse to answer questions if said questions tended to incriminate him. The courts implementing *Miranda* have jealously guarded the exact substance of this right. *United States v. Mullings*, 364 F.2d 173, 175 (2nd Cir.); *United States v. Fox*, 403 F.2d 97, 100 (2nd Cir.). In *Miranda*, this Court held that as an "absolute prerequisite to interrogation" the person must be told of the "right to consult with a lawyer and to have the lawyer with him during interrogation" (384 U.S. 471). Here the Special Agents told petitioner "[Y]ou may, if

---

[2] The IRS itself recognizes that the warnings given by a special agent during an interview do not comply with *Miranda*. Instructions issued to IRS special agents provide for full *Miranda* warnings only when the person is taken into custody or placed under arrest. See *U.S. Tax Cases*, CCH 67-2, p. 84,547, Par. 9489 n.3. (R. 9, p. 19.)

you wish, seek assistance of an attorney before responding." Such a watered-down explanation of this right has been held inadequate. *Windsor v. United States*, 389 F.2d 530 (5th Cir.). In addition, absolutely nothing was told to petitioner about his rights to an appointed attorney.[3] Since the date of the *Miranda* decision, courts have suppressed statements which did not include this portion of the required warning. *Green v. United States*, 411 F.2d 588 (10th Cir.); *United States v. Miller*, 261 F. Supp. 442 (D. Del.)[4]

II.

CONFLICT IN THE CIRCUITS.

The usual Federal tax investigation has two possible stages: first, the civil stage where an audit is conducted by Revenue agents and possibly, second, the criminal stage where a Revenue agent has uncovered fraud and has turned the case over to the Special Agents of the Intelligence Division whose job is limited to obtaining evidence in support of criminal tax fraud prosecutions. As has been outlined heretofore, petitioner's case involved only Special Agents of the Intelligence Division whose exclusive function was to prepare evidence for the prosecution of petitioner.

---

[3] This Court's decision in *Michigan v. Tucker*, 94 S. Ct. 2357, is not to the contrary, since that case concerned the question whether an inadequate *Miranda* warning could taint other evidence which police uncovered by virtue of statements that were suppressed.

[4] See the complete advice of rights of the District of Columbia Metropolitan Police Department at App. 4b which has been held to comport fully with *Miranda*. *Pettyjohn v. United States*, 136 U.S. App. D.C. 69, 70 n.3, 419 F.2d 651, 652 n.3, *cert. denied*, 397 U.S. 1058.

The law in the Seventh Circuit is that, whenever a case has shifted to the Intelligence Division of the Internal Revenue Service, the involved taxpayer must be accorded the benefit of full *Miranda* warnings. *United States v. Dickerson*, 413 F.2d 1111 (7th Cir.). In reaching its decision on this issue, the Seventh Circuit Court of Appeals relied heavily upon the District Judge in *United States v. Turzyanski*, 268 F. Supp. 847 (N.D. Ill.), who ruled as follows:

> [O]nce a taxpayer becomes the subject of a criminal tax investigation, as evidenced by the referral of the investigation to the Intelligence Division or otherwise, our adversary process of criminal justice has become directed against him as a potential defendant. Any evidence obtained from him is admissibly only if the taxpayer furnished it after knowingly and voluntarily waiving his Constitutional rights and privileges. [Citations omitted.]
>
> To hold otherwise would lead to the anomalous conclusion that a person suspected of bank robbery, sale of narcotics, murder, rape or other serious crime is entitled to greater protection of his constitutional rights than a person suspected of violating the internal revenue laws. For when the silent transition from civil to criminal investigation takes place in a tax case, the taxpayer being interrogated and asked to furnish his books and records is just as surely a prime suspect and candidate for criminal prosecution as the individual under interrogation as a suspect for other crimes. (Id. at 850-851.)

The decision of the United States Court of Appeals for the District of Columbia in this case is in square conflict with the above rule of the Seventh Circuit and a need for uniformity of decision exists.

III.

THE IMPORTANCE OF THIS CASE.

In the light of this nation's recent experience with an Administration's compiling "enemies lists" and utilizing the Internal Revenue Service to "harass" citizens because of their unpopular political views or for other non-tax-related reasons, this case clearly involves a question of exceptional importance meriting consideration by this Court. Because this country utilizes a system of self-taxation and because our tax laws are so technical and complex, there exists, on the part of those who administer those tax laws, a great potential to abuse the Fifth Amendment's privilege against self-incrimination. The legality of the Government's labeling a citizen a target defendant for a non-tax-related reason and then proceeding to harass him and to convict him out of his own mouth without extending him the full panoply of Fifth Amendment rights is a question of far-reaching significance. E.g., this case presents an excellent opportunity for judicial consideration of the propriety of the anomalous situation existing with respect to Special Agents of the Intelligence Division of the Internal Revenue Service. It is counsel for petitioner's understanding that the involved Intelligence Division of the Internal Revenue Service is this country's only criminal law enforcement agency that has, as a matter of routine, substituted its own limited advice of rights for those set out by this Court in *Miranda v. Arizona*.

CONCLUSION

WHEREFORE, it is submitted that this Court should grant this petition and issue a writ of *certiorari* to the United States Court of Appeals for the District of Columbia Circuit.

Respectfully submitted,

JOHN G. GILL, JR.
22 West Jefferson Street
Rockville, Maryland 20850
Attorney for Petitioner.

April 2, 1975

APPENDIX A

Notice: This opinion is subject to formal revision before publication in the Federal Reporter or U.S. App. D.C. Reports. Users are requested to notify the Clerk of any formal errors in order that corrections may be made before the bound volumes go to press.

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 74-1592

UNITED STATES OF AMERICA

v.

ALVIN A. BECKWITH, JR.,
A/K/A ALVIN A. BECKWITH, APPELLANT

Appeal from the United States District Court
for the District of Columbia

(D.C. Criminal 480-73)

Decided January 22, 1975

John G. Gill, Jr., for appellant.

Earl J. Silbert, United States Attorney, *John A. Terry*, *Barry W. Levine* and *Raymond J. Coughlan, Jr.*, Assistant United States Attorneys, were on the brief for appellee.

Before: BAZELON, *Chief Judge*, TAMM and ROBB, *Circuit Judges*

Opinion for the Court filed by *Chief Judge* Bazelon.

BAZELON, *Chief Judge*: Agents of the Intelligence Division of the Internal Revenue Service visited appellant Alvin Beckwith at the home of a friend on August 2, 1972. On the basis of information obtained in that visit and of other information Beckwith was indicted and subsequently convicted on March 21, 1974, of one count of attempting to evade or defeat federal income taxation.[1] On October 4, 1973, previous to this conviction, Beckwith moved to suppress all the statements made during the course of the interview conducted at his friend's home in August, 1972, charging that the interview violated his rights guaranteed by the Fifth Amendment to the Constitution. In particular, he alleged that since the Intelligence Division had singled him out for prosecution on the basis of his alleged gambling activities prior to the interview, the interview was in its nature coercive and tended to compel him to incriminate himself. The District Court rejected this argument and Beckwith now appeals from his conviction, arguing that the District Court was mistaken in this respect. We affirm.

Beckwith's argument is based upon *Miranda v. Arizona*, 384 U.S. 436 (1966) as that case was applied to criminal tax investigations in *Mathis v. United States*, 391 U.S. 1 (1968). However, those cases involved police interrogation in so-called "custodial" circumstances. Their reasoning is based in crucial part on this fact[2] and cases following upon those seminal decisions have limited their principle to such "custodial" circumstances.[3] Beckwith

[1] *See* 26 U.S.C. § 7201 (1970). Beckwith was indicted for two counts, sent to trial on the first and after conviction the second count was dropped.

[2] *See* 384 U.S. at 444-50.

[3] *See* Orozco v. Texas, 394 U.S. 324 (1969); Hoffa v. United States, 385 U.S. 293, 304 (1966); United States v. Scully, 415 F.2d 680 (2d Cir. 1969); *cf.* Michigan v. Tucker, 417 U.S. 433 (1974). *See also* the reasoning of United States v. Stamp, 458 F.2d 759 (D.C. Cir. 1971), *cert. denied*, 406 U.S. 975 (1972); United States v. Robinson, 439 F.2d 553 (D.C. Cir. 1970); United States v. Wong, No. 74-1636 (9th Cir. Sept. 23, 1974) (coercion in grand jury interrogation). This has been repeatedly emphasized in tax investigation cases. *See, e.g.*, United States v. Robson, 477 F.2d 13 (9th Cir. 1973); United States v. Engle, 458 F.2d 1017 (8th Cir.), *cert. denied*, 409 U.S. 875 (1972); United States v. Jaskiewicz, 433 F.2d 415 (3d Cir. 1970), *cert. denied*, 400 U.S. 1021 (1971); United States v. Squeri, 398 F.2d 785 (2d Cir. 1968).

does not and could not reasonably assert that his interrogation was in custodial circumstances. While the meaning of "custodial" circumstances can include interrogation at a private home,[4] it does not always. Rather the test is whether the suspect "has been taken into custody or otherwise deprived of his freedom in any significant way."[5] Here Beckwith was neither arrested nor detained against his will. He was not subject to formal interrogation before a grand jury. The record reflects no use of any police interrogation techniques or any sort of browbeating. He was free to leave at any time and in fact was out of the agents' presence more than once. Indeed, one of Beckwith's complaints is that the meeting was so friendly that he was deceived into believing that he was not incriminating himself.

The major thrust of Beckwith's argument is that the principle of *Miranda* and *Mathis* should be extended to cover interrogation in non-custodial circumstances after a police investigation has focused on the suspect. We are not impressed with this argument in the abstract nor as applied to the particular facts of Beckwith's interrogation. His interview had none of the indicia of coercion that motivated the *Miranda* scrutiny of investigative methods and thus it cannot be seriously argued that

[4] Orozco v. Texas, 394 U.S. 324 (1969).

[5] Miranda v. Arizona, 384 U.S. 436, 477 (1966).

Beckwith was "compelled" to answer any questions. Furthermore, the agents did give Beckwith a modified *Miranda* warning which while not in full compliance with *Miranda* does give the suspect some notice that his statements might be used against him.[6] The extent to which such a warning must be given is not implicated in this case. Beckwith's argument apparently confuses the requisites of *compulsion* which bring to bear Fifth Amendment interests with the requisites of a *waiver* of Fifth Amendment rights once those rights attach.[7] The fact that a statement might be made in such a manner as to raise doubts that it constitutes a voluntary and intelligent waiver of the right to counsel and the right to remain silent does not necessarily mean that it was coerced or compelled within the intendment of the Self-Incrimination clause. Therein lies Beckwith's error. In *Miranda* and *Mathis* the Court found that custodial interrogations were inherently coercive and statements made therein necessarily compelled. Once having made that judgment, it followed inexorably that only a complete waiver of the Fifth Amendment and Sixth Amendment rights during interrogation would cleanse such statements from the taint of compulsion. But Beckwith's statements need not be found to be a waiver since no right had attached which he was in a position to waive.[8]

---

[6] The following warning was given:

> Under the Fifth Amendment to the Constitution of the United States, I cannot compel you to answer any questions or to submit any information if such answers or information might tend to incriminate you in any way. I also advise you that anything which you say and any information which you submit may be used against you in any criminal proceeding which may be undertaken. I advise you further that you may, if you wish, seek the assistance of an attorney before responding.

[7] *Cf. Michigan v. Tucker*, 417 U.S. 433, 444 (1974).

[8] *Cf.* United States v. Stamp, 458 F.2d 759, 780-81 (D.C. Cir. 1971), *cert. denied*, 406 U.S. 975 (1972). The only case supporting Beckwith's argument is United States v. Dickerson, 413 F.2d 1111 (7th Cir. 1969). That case might be distinguished since no warnings whatsoever were given and the court might well have been simply too broad in its remedial assertion that the full panoply of *Miranda* rights attached in a noncustodial interrogation. In any event, we are not impressed with the assertion that Beckwith's interrogation was coercive within the intendment of *Miranda* whatever may have been the factual situation in *Dickerson*.

It follows from the preceding discussion that the proper inquiry is not whether Beckwith waived anything but whether his statements to the agents were voluntary. We find that they are. There is no claim that Beckwith's mental condition or education were so limited that he was particularly susceptible to interrogation. Furthermore, a modified warning was given, no unusual interrogation techniques were employed and the agents did not, contrary to Beckwith's claim, mislead him as to their purpose in interrogating him. The entire interview was free of coercion[9] and it follows that the District Court properly refused to suppress Beckwith's statements. Beckwith's conviction is, therefore,

Affirmed

---

[9] *See* Frazier v. Cupp, 394 U.S. 731 (1969); United States v. Stamp, 458 F.2d 759 (D.C. Cir. 1971), *cert. denied*, 406 U.S. 975 (1972); United States v. Robinson, 439 F.2d 553 (D.C. Cir. 1970); United States v. Jaskiewicz, 433 F.2d 415 (3d Cir. 1970) and authorities cited.

APPENDIX B

ORAL OPINION OF THE DISTRICT COURT

* * *

[141] THE COURT: You keep talking about civil ripening into criminal. There is no civil involved in this matter and there is no suggestion in the evidence anywhere that this is a civil matter or ever was a civil matter. There is no evidence before me that it ever started out one way and went on in another way.

MR. HOFFMAN: Your Honor, our position is that if this case was a criminal matter then it should have been treated in that respect. If that is the case it should have been treated that way and I am not arguing to the court to expand Miranda, to mean that Mr. Beckwith ought to have had any short courses in tax law or anything of that sort, but I am merely saying that he was entitled to at least the same as other people accused of crimes and not less. I am only asking for equal treatment of this defendant and that is one thing that he didn't get.

THE COURT: No, he is entitled to it when the court finds as a fact that there were custodial circumstances. I have to find a situation that required it and I find on this record that there is no evidence whatsoever of any such situation. I find that he knew that they were investigating his taxes and he knew for what years and the knew the possibility [142] of criminal involvement. He knew he could have a lawyer and he knew that he didn't have to say anything to them about it if he didn't want to.

He knew all of that; he knew all of that and there is nothing that I see here to suggest that the basic criteria

usually found by the courts that would require any further expansion exists in this case.

My understanding of the law is that Miranda warnings are required in tax cases only when the underlying evil which Miranda sought to guard against arises in which case the court must inquire as to when the process passes from the investigatory to the accusatory stage – and here it is from the very beginning – when the defendant became a suspect of specific crime, when the defendant was subject to a psychologically coercive atmosphere of government interrogation or demands for financial records or when his freedom of action was significantly infringed.

When you have a fact situation that suggests that, the law, as I understand it, requires the litany of Miranda, requires the exposition of the rights, broader than they were expounded in this case, and I find from the evidence, and it is uncontradicted, that his basic rights were in fact explained to him.

This is not a situation in which they said anything other than "we are IRS agents, sit down, we would like to ask [143] you some questions."

The Motion to Suppress is denied.

* * *

EXHIBIT "A"

(R. 7, p. 14)

D.C. Liquor Seller Held In Tax Case

The manager of a D.C. liquor store has been indicted by a special U.S. District Court grand jury on charges of federal income tax evasion.

1818 Q St. SE, was indicted by Alvin A. Beckwith Jr., of 1818 G St. SE, was indicted by the jury last week on charges of understating his income for the tax years of 1970 and 1971 by $19,000. Sources in the U.S. attorney's office said the indictment was part of a continuing program that has been described by that office as "legal harassment" of persons whom they believe to be connected with underworld narcotics activity here.

A press release by the U.S. attorney's office pointed out that Beckwith, who manages the Colorado Liquor Store, 5514 Colorado Ave. NW, was arrested by Bureau of Narcotics and Dangerous Drugs agents as well as Internal Revenue agents.

Beckwith is free on personal bond.

BEST COPY AVAILABLE

[Rights read to Petitioner (R. 7, p. 15)]

"Under the Fifth Amendment to the Constitution of the United States, I cannot compel you to answer any questions or to submit any information if such answers or information might tend to incriminate you in any way. I also advise you that anything which you say and any information which you submit may be used against you in any criminal proceeding which may be undertaken. I advise you further that you may, if you wish, seek the assistance of an attorney before responding."

(Miranda Warning approved by District of Columbia Circuit *Pettyjohn v. United States*, 136 U.S. App. D.C. 69, 70 n.3, 419 F.2d 651, 652 n.3)

"WARNING AS TO YOUR RIGHTS

You are under arrest. Before we ask you any questions, you must understand what your rights are. You have the right to remain silent. You are not required to say anything to us at any time or to answer any questions. Anything you say can be used against you in court. You have the right to talk to a lawyer for advice before we question you and to have him with you during questioning. If you cannot afford a lawyer and want one, a lawyer will be provided for you. If you want to answer questions now without a lawyer present, you will have the right to stop answering at any time. You also have the right to stop answering at any time until you talk to a lawyer."